



Appeal Decisions

Site visit made on 12 September 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2023

Appeal A: Appeal Ref: APP/V5570/W/23/3314479
156 Junction Road, Islington, London N19 5QQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Amit Green of Tufnell Park Investments LLP against the decision of the Council of the London Borough of Islington.
 - The application Ref P2022/2152/FUL, dated 7 June 2022, was refused by notice dated 15 August 2022.
 - The development proposed is construction of new five-storey building comprising eight self-contained residential units (1 x 1 bed, 6 x 2 bed and 1 x 3 bed) and associated works.
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Appeal B: Appeal Ref: APP/V5570/W/23/3320671
156 Junction Road, Islington, London N19 5QQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Amit Green of Tufnell Park Investments LLP against the Council of the London Borough of Islington.
 - The application Ref P2023/0314/FUL, is dated 30 January 2023.
 - The development proposed is erection of a five-storey building comprising of 5 x 3 bed residential units (Class C3) with associated bin and cycle stores and associated works.
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Decisions

Appeal A: Appeal Ref: APP/V5570/W/23/3314479

1. The appeal is dismissed.

Appeal B: Appeal Ref: APP/V5570/W/23/3320671

2. The appeal is dismissed and planning permission for erection of a five-storey building comprising of 5 x 3 bed residential units (Class C3) with associated bin and cycle stores and associated works is refused.

Preliminary Matters

3. The proposals are located on the same site. I have therefore considered the appeals in a single decision letter to avoid repetition. However, I have considered each appeal on its individual merits.
4. In respect of Appeal B, the description of the development provided on the planning application form has been replaced by an amended version on the

appeal form. I consider that subsequent description to be usefully more comprehensive and I have therefore used it within this decision. Also in respect of Appeal B, I have taken the appellant's company name from the planning application form as the right of appeal rests with the original applicant.

5. During the course of these appeals the Council has adopted the Islington Local Plan, which includes the Strategic and Development Management Policies 2023 (the SDMP). It now forms part of the development plan and thus supersedes earlier development plan documents referred to within the Council's decision notice and indicated reasons for refusal. Both main parties have had the opportunity to comment on this matter. I have proceeded to determine these appeals on the basis of the adopted development plan.
6. In respect of both appeals, the appellant has submitted a draft Unilateral undertaking including contributions to affordable housing and carbon offset. These have been submitted in draft due to the phasing of the affordable housing contribution. Nevertheless, I have had regard to these documents in reaching my decisions.

Background and Main Issues

7. Appeal B was submitted following the Council's failure to give notice of its decision within the prescribed period. In its Statement of Case, the Council has indicated the decision it would have made had it been in a position to do so.
8. On the basis of the evidence submitted in respect of both appeals, the main issues are the effect of the proposals on the:
 - Character and appearance of the area;
 - Living conditions of future residents of the proposals with regards to external amenity space and (Appeal A only) privacy and outlook;
 - Living conditions of neighbouring residents with regards to outlook, light and (Appeal A only) privacy;
 - Mix of housing; and
 - (Appeal A only) Trees.

Reasons

Character and Appearance

9. The appeal site is a vacant plot of land located between the busy thoroughfare of Junction Road and a railway line to the rear. The site is currently empty, but it previously contained a Victorian dwelling. The immediate streetscape is residential in character, primarily consisting of flats and residential uses in blocks or other substantial buildings. On one side of the site is a substantial building of a traditional appearance which has been converted into flats. On the other side is a low-level commercial building projecting to the edge of the footpath, and which appeared to be vacant and unkempt at the time of my visit.
10. There is some variation in the building line along the length of Junction Road. However, in the vicinity of the appeal site the residential buildings are set back

from the edge of the pavement which gives the streetscape a relatively open and pleasant character.

11. In respect of **Appeal A** the set-back from the edge of the footpath would be limited, particularly due to the overhang of the upper floors of the building to the front of the site. The bulky projection beyond the building line would not respect the more generous set-back of the substantial buildings in the immediate vicinity of the site, and due to this would result in an overly prominent and incongruous feature within the streetscape. Even allowing for a slight bend in the highway, the appeal site is most closely visually associated with the attractive substantial villa style building at 158 and 160 Junction Road. The proposed projection beyond the front of this building would lead to an overdominant relationship and which would result in a jarring relationship in views along the streetscape.
12. There are buildings further to the south along Junction Road which project directly to the edge of, or very close to, the pavement. But these served to confirm the stark and enclosing appearance of this form of development. There is a building on the opposite side of the road over the railway bridge which also projects close to the edge of the highway. However, this is distinctly separate from the appeal site, and does not establish a prevailing context to justify the degree of projection of the appeal proposal.
13. The proposal would also project further to the rear than the adjacent building of Nos 158 and 160. However, the building line to the rear is not well-defined and the rear of the proposal would be less prominent in views of the area. Subject to consideration of matters including design and massing, the projection of the building to the rear would not be sufficient reason to refuse permission.
14. In respect of the scale and form of development, due to the mixture of building heights in the area, a building of the height proposed on the site would not be unduly incongruous. However, the form of the building proposed is unfortunate, with the uppermost floor off-set to one side and a step-back in the main elevation to the other side. This gives the proposal a somewhat jumbled and unbalanced appearance which would not sit comfortably within the site or in relation to nearby buildings.
15. The uppermost floor would also be almost flush with the principal elevation and one side wall. Although the front of the upper floor would have extensive glazing and use different materials to much of the lower floors, this arrangement would add a top-heavy appearance to the building and would emphasise its unbalanced appearance. The design of the front elevation also has a relatively horizontal emphasis, such as through the use of concrete banding and a parapet, which would not reflect the vertical emphasis of Nos 158 and 160.
16. Notwithstanding my previous comments in respect of the projection to the rear, the north elevation of the proposal would be apparent as a slab-sided building of an unacceptable massing, which detailing including string courses, lintels and recessed reveals would do little to mitigate.
17. The appellant refers to the potential to create a 'mirroring' arrangement with development on the site to the north. However, based on the evidence before me, the neighbouring site is not controlled by the appellant and does not form

part of the appeal proposal or a wider development scheme. The development of the adjacent site is therefore no more than a hypothetical scenario, and I have determined Appeal A on the basis of it being a standalone scheme.

18. In respect of **Appeal B**, the appellant contends that the proposal is articulated as a main volume that sits in line with No 158, with only bays projecting beyond this line. However, the bays extend across the great majority of the main front façade, with the end bays angling back to terminate almost directly with the side elevations. Due to the scale of the bays, this approach would not be successful in replicating the building line, and the proposal would still appear as an unacceptably obtrusive feature projecting beyond the building line of Nos 158 and 160. Although the proposal in Appeal B would not project to the front as much as that in Appeal A, the appellants approach to further mitigating the impression of projection regarding Appeal B would not be successful.
19. The proposal would also be a box-like structure of a significant scale and massing. Although the total height may reflect that of Nos 158 and 160, the massing of the upper floor would not respect the pitched roof design of the neighbouring building and would add to the proposals overdominant appearance. The lack of a significant recess to the front, side and rear of the upper floor would lead to an overdominant and jarring feature within this part of the streetscape. The set back of the uppermost element of the facade adjacent to No 158 would do little to mitigate the bulky appearance of the building or the poor relationship with the neighbouring site; and in any event this would add to the clumsy appearance of the façade. The vertical hierarchy of the different levels of the building would also not be well articulated, and this adds to the top heavy and bulky appearance of the proposal.
20. The extensive areas of glazing (including translucent film) and metal mesh/panels on the front elevation would also not reflect the materials used in nearby buildings, and would add to the incongruous appearance of the proposal. The Council's concerns in respect of the use of materials being inappropriate for this residential development in this context is well-founded. The matter of materials can often be controlled by condition, but given the integral nature of the proposed materials to the construction of the front elevation I do not consider that a condition requiring more suitable materials would be feasible, notwithstanding the possible use of brick on the side elevations.
21. The height and mixture of materials of the front boundary treatment would also add to the incongruous appearance of the proposal and the impression of separation from the streetscape. Even allowing for the variation in boundary treatments along this part of Junction Road, they are primarily low rise walls with some railings and timber fencing, and the form and materials used for the appeal proposal would jar uncomfortably with the nearby frontages.
22. I have had regard to the comments of the Council's Design and Conservation consultee as emphasised by the appellant. However, I note that the consultee maintains an objection to the Appeal B proposal, and their comments on matters of specific elements of the design do not negate my own observations or those of the Council's case.
23. With regards to both appeals, the presence of buildings of a similar scale and massing in the wider streetscape would not be sufficient to justify the arrangement, scale, massing and poor design of the proposals within the

immediate site context. The slight bend in the highway and interruption to the streetscape created by the railway bridge are also not sufficient to justify the incongruous and obtrusive form of both proposals. Although the proposals may have recognisable bottom, middle and top elements, this would not be sufficient to overcome my concerns on their insensitive and obtrusive design and scale. Even allowing for the oblique nature of views of the site along Junction Road, the overprominent and incongruous appearance of the proposals would still be apparent.

24. I therefore conclude that both Appeal A and Appeal B would lead to significant harm to the character and appearance of the area due to their arrangement, scale, massing, design and (Appeal B) use of materials. The proposals would therefore be contrary to the design requirements of Policies D3 and D4 of the London Plan 2021, and Policies PLAN1 and DH1 of the SDMP. The proposals would also be contrary to the advice of the Council's Urban Design Guide Supplementary Planning Document 2017 (the UDG) with regard to securing high quality design.

Living Conditions of Future Residents

25. In respect of **Appeal A**, Policy H4(I) of the SDMP requires that all new residential units should be dual aspect, unless provision is demonstrated to be impossible or unfavourable. The layout of the proposed dwellings attempts to provide a dual aspect for each of the flats, although given the constraints of the site this leads to some contrived and unsatisfactory results such as the high level window for the living area of Flat 1 which would look onto the partially enclosed entrance.
26. The window for bedroom 3 of Flat 2 would also be set at a high level. Although this would overlook the landscaped roof of the bike store and may be well-lit, the restricted outlook would lead to an oppressive environment for occupants, even given the form of occupation of a bedroom.
27. The outlook for some bedrooms within Flats 2, 3, 4, 5 and 6 would also be unduly constrained due to the relationship with the side wall of No 158. Although the Council accepts that the proposal would provide adequate levels of light for residents, the outlook from bedroom windows which face onto No 158 or look along the boundary in close proximity to the flank wall would provide an unduly enclosed and oppressive outlook.
28. The external amenity space for Flat 1 is located to the front of the building, adjacent to the busy highway of Junction Road. Even allowing for the generous size of this amenity area and its setting slightly lower than road level, the quality of this amenity area would be severely compromised by noise and fumes from the highway and overlooking from pedestrians and passing vehicles. The provision of a planting bed between the amenity space and pavement would do little to mitigate the harm to the living conditions of residents arising from the unsuitable location of this amenity area. Although other buildings in the area may have amenity space adjacent to the highway, this does not justify the provision of an unacceptable external amenity area of the form proposed as part of this new development.
29. The main habitable rooms of Flat 1 would look onto the amenity area and highway. Concerns in respect of noise and inadequate privacy would also apply to these rooms due to the proximity of the highway, and the sense of enclosure

- created by the boundary treatment of the amenity area. The building overhang would also lead to an oppressive environment for residents. As indicated previously, the proposed planting bed would do little to address these issues.
30. I am mindful of the constraints of the site, particularly with regard to the provision of dual aspect dwellings. However, even within that context, the proposal would not provide suitable living conditions for residents with regards to the outlook, privacy and external amenity space for residents of Flat 1, and in respect of the outlook from bedrooms within Flats 2, 3, 4, 5 and 6. In respect of Appeal A, the proposal would therefore be contrary to Policies D6 of the London Plan and H4 of the SDMP in respect of delivering high quality housing. The proposal would also be contrary to the advice of the UDG which seeks to provide a good level of amenity.
 31. With regard to **Appeal B**, the external amenity space for the upper floor apartments would be provided by balconies to the front and rear of the building. Although the combined space provided by these balconies may meet the relevant space standards, the splitting of the external amenity area would not be a suitable form of provision for a family dwelling where the whole household should be able to access external space together. This is reflected in the supporting text for Policy H5 of the SDMP which refers to the provision of sufficient space for a family to sit outside with visitors.
 32. The balconies are also of an awkward shape which would limit the usable space for occupants. The balconies located to the front of the building would also be susceptible to noise and disturbance from Junction Road compared to a more secluded location to the rear.
 33. Larger balconies on upper floors may lead to noise and loss of privacy for neighbouring residents. However, the size of balconies required by Policy H5 would not be overly large, and the potential for noise and overlooking would not be materially greater than the smaller separate balconies proposed.
 34. Policy H5(H) of the SDMP requires that all new build residential developments must provide step-free access to private outdoor space. In respect of Appeal B, the access from the maisonettes to the gardens to the rear does not meet this requirement. The appellant has submitted an amended scheme showing how ramped access to the rear gardens can be provided along the site boundary. However, this access would be overly long and convoluted, and would not provide a suitably convenient route for residents who may require step-free access.
 35. However, the appellant has indicated a platform lift for one of the maisonettes which could provide access to the rear garden, and it may also be possible to provide this form of access for the other maisonette. I have not been made aware of fundamental objections to this form of access, and further details for the provision of platform lifts for both maisonettes could be secured by condition. On that basis, the provision of step-free access could be secured for both maisonettes.
 36. Notwithstanding my conclusions in respect of step-free access, I conclude that the proposal which is the subject of Appeal B would not make suitable provision for private outdoor space for the proposed apartments due to the design and arrangement of the balconies. In respect of Appeal B, the proposal would therefore be contrary to Policy H5 of the SDMP in respect of providing good

quality private outdoor space. The proposal would also be contrary to the advice of the UDG which seeks to provide a good level of amenity.

Living Conditions of Neighbouring Residents

37. The buildings proposed in both Appeal A and Appeal B would be located close to the side wall of No 158. The bulk and massing of the upper floors of the building in Appeal B would be located closer to the boundary than those of Appeal A.
38. The appeal site originally contained a 2-storey dwelling, although this had been demolished at the time of my visit.
39. There are a number of windows serving the flats in No 158 which could be affected by the appeal proposals. These primarily consist of a side window on the ground floor, and 2 side windows and a rear window at basement level. The effect on these windows has been considered by Daylight and Sunlight Reports (DASR) submitted by the appellant for both appeals.
40. In respect of the windows in the basement of No 158, one of the side windows serves a kitchen and currently provides a limited degree of outlook and light due to its design and location at a lower level close to the boundary. The kitchen is also relatively small, which limits its functionality as a dining area. The appellant states that the kitchen window is obscure glazed. Compared to the effect from the previous building on the appeal site, this kitchen window would suffer a material loss in respect of daylight and the Virtual Sky Component (VSC), particularly in respect of Appeal B. However, given the nature of the occupancy of this kitchen and the established context I do not consider that the effect on this window would be sufficient to warrant the refusal of planning permission in either of the appeals.
41. The second window at basement level serves a bedroom, although the DASR states that this window has obscure glazing. This room has a dual aspect as it is also served by the basement window to the rear. Compared to the effect from the previous building on the appeal site, the DASR specifies that this room would suffer a loss of daylight in respect of both appeals, and a loss VSC to the side window in respect of Appeal B. However, in respect of both appeals, the rear window serving this room would benefit in terms of VSC. Given these circumstances and the dual aspect nature of this bedroom, I consider that the proposal would not lead to unacceptable harm to occupants of the basement bedroom.
42. However, the DASR demonstrate that both appeal proposals would lead to a significant loss of daylight and VSC for the ground floor side bedroom of No 158. Due to the proximity of the side wall of both proposals, they would also have an unacceptably enclosing and oppressive effect in views from that room.
43. The appellant contends that this bedroom is used for storage and that it is too small to be classed as a habitable room due to being insufficient in size/length to accommodate a bed. However, submitted evidence refers to this room as being a bedroom, including land registry drawings and the tables relating to daylight and sunlight calculations in the DASR. The dimensions in Figure 2.1 in the appellant's statements of case also indicate that the room is capable of containing at least a single bed. Although this room may not meet modern space standards, there is no substantive evidence before me that it is not used

as a bedroom. On that basis, the proposals would lead to substantial reductions in the level of light and outlook for a bedroom which currently provides poor quality accommodation, with significant cumulative harm to the living conditions of occupants.

44. The appellant has referred to the use of a 'mirror image' approach to establish the appropriate form of massing for the numerical targets for windows that are located on, or close to, the boundary on secondary elevations as in the case of No 158. However, as set out in Appendix F of the BRE Guidance¹, the 'mirror-image' approach needs to be applied sensibly and flexibly. For example where a long established dwelling has windows on or very close to the boundary, it would be inappropriate to remove all or nearly all their light. The appellant contends that the affected window is not part of the original construction of No 158. However, whilst that may be the case, there is no evidence that the affected window is not a long established feature.
45. The appellant sets out that Nos 156 and 158 have previously been in common ownership, and that a reservation was included in the conveyance regarding rights to the availability of daylight at No 158. However, the appellant accepts that this is not a material planning consideration, and this does not therefore lead me to a different conclusion on the matters of light and outlook in respect of these planning appeals.
46. The windows of bedroom 2 of Flats 4 and 6 would provide an elevated view of a bedroom window to the side of No 158. Even given the degree of offset between the windows, the proximity and elevated view provided by the proposed windows would enable an intrusive degree of overlooking into the ground floor bedroom of No 158, with significant harm to the privacy of occupants.
47. The Council refers to potential overlooking from Flats 3 and 5, but due to their arrangement and degree of separation I do not consider that these windows would lead to an unacceptable loss of privacy in respect of the neighbouring property.
48. The appellant has referred to an appeal decision² elsewhere where the Inspector concluded that the loss of even significant amounts of daylighting would not make any great difference to the pattern of use and enjoyment of second bedrooms. However, it has not been demonstrated that the effects of those appeal proposals represent a direct parallel to the appeals before me, both in respect of the extent and form of loss of light and the guidance in place at that time. I have determined these appeals on their own merits based on what I have seen and read, and in any event the conclusions in respect of those other appeals does not address my concerns in respect of outlook and privacy.
49. The Council has referred to the matter of sunlight, which it accepts is an error. However, this does not negate the harm arising from other aspects of this main issue.
50. To summarise the above, I conclude that the proposals subject to Appeal A and Appeal B would lead to significant harm to the living conditions of residents of

¹ "Site layout planning for daylight and sunlight : A guide to good practice " Building Research Establishment, 2022.

² Appeal Refs APP/N5660/W/18/3211223 and APP/N5660/W/19/3225761, Graphite Square, London SE11 5EE.

No 158 due to the loss of light and outlook to a ground floor bedroom. Appeal A would also lead to significant harm to the privacy of occupants of that bedroom. The proposals would therefore be contrary to Policy Plan1 of the SDMP which seeks to provide a good level of amenity. The proposals would also be contrary to the advice of the UDG with regards to providing a good level of amenity.

Mix of Housing

51. In respect of **Appeal A**, the Council's decision refers to the provision of a single bedroom unit. However, this concern stems from Policy DM3.4 and the supporting notes of Table 3.2 of the Council's Development Management Policies 2013, which have been superseded by the adoption of the SDMP.
52. Policy H2 of the SDMP is now the most relevant policy to this issue. This policy is more permissive of single bedroom units compared to the previous development plan, subject to there being no concentration of such units. Although Table 3.2 of the SDMP identifies single bedroom dwellings as being of a low priority, the proposed single bedroom unit would be a minor part of the proposed mix of units. The proposal also includes dwellings identified as a higher priority, particularly 2-bedroom market dwellings which are identified as a high priority.
53. On that basis, the proposal which is the subject of Appeal A would not conflict with Policy H2 of the SDMP in respect of the mix of housing sizes.
54. With regard to **Appeal B**, the proposal consists solely of 3-bedroom dwellings. Policy H2(D) of the SDMP specifies that all development proposals must provide a good mix of unit sizes which contributes to meeting the housing size mix priorities set out in Table 3.2. Three-bedroom units of the type proposed are identified as a medium priority, whereas 2-bedroom units are identified as a high priority. Even if this policy is only used to 'inform' minor development, Policy H2 and the supporting text and table are material considerations. The proposal makes no provision for the form of housing which is identified as a higher priority than the type of units proposed, and the proposal would therefore conflict with Policy H2 in respect of providing a good mix of unit sizes to meet identified housing priorities.
55. Further in respect of Appeal B, the appellant contends that the provision of 2-bedroom units would have led to compromised dwellings of an unsuitable quality. But even given the issues raised by the quality of units in Appeal A, there is no substantive evidence that the constraints of the appeal site are such that 2-bedroom units would be inherently unacceptable. I am mindful that 3-bedroom units may be more flexible should residents wish to use a room as a home office, but this does not negate the weight that should be given to the housing priorities set out in the development plan.
56. I therefore conclude that the proposal which is the subject of Appeal B would not provide a suitable mix of housing, contrary to Policy H2 of the SDMP.

(Appeal A only) Trees

57. There is a semi-mature Plane tree located in the highway to the front of the site. This street tree makes an important contribution to the visual amenity of the area, as well as providing a biodiversity habitat. As a semi-mature tree,

there is significant potential for these benefits to develop further as the tree continues to grow.

58. The proposed ground floor patio area for the proposal would be below pavement level and would include a retaining wall. This would be located within the typical root protection area (RPA) of this Plane tree. The appellant's Arboricultural Report³ refers to an investigation trench along the site which found no evidence of roots from the tree. This Report concludes that the proposal would have no impact on the RPA. However, given the nature and proximity of the proposed works, I am not persuaded that this is a robust assessment of the effect on the future growth and stability of the Plane tree.
59. However, even if I had concluded that there would be no effect in respect of the RPA, the front elevation and an amenity space of the building would be located in close proximity to the canopy of this street tree with a potential canopy overhang across the site boundary. This would harm the living conditions of future residents through permanent shading and falling debris, with subsequent pressure for a degree of pruning and canopy maintenance that would unacceptably compromise the value of this tree. Although street trees may be subject to regular maintenance, this does not justify development which would have an unacceptable effect on the potential amenity and biodiversity value of such a tree.
60. There is also an Ash tree within the rear part of the site which is covered by a Tree Preservation Order. The Council has expressed concern about the harm arising from the proximity of building works to this tree. However, the appellant has confirmed that this tree has died, and this reflects my observations on my visit. The appellant has also confirmed that the Council has been notified of this, and that it has specified that a replacement tree should be provided. It has not been demonstrated that there is opportunity to plant a suitable replacement tree within the confines of the appeal proposal, and had I been minded to allow this appeal this is a matter I would have considered further. But, subject to the evidence before me and the planting of a suitable replacement tree, I conclude that the proposal would make appropriate provision in respect of the protected Ash tree.
61. Notwithstanding my conclusions in respect of the protected Ash tree, I conclude that the proposal would lead to unacceptable harm to the Plane street tree and would therefore be contrary to Policy G4 of the SDMP in respect of minimising impacts on existing trees and providing sufficient space for future growth.

Other Matters

62. I am mindful of the benefits of the proposals. They would add to the supply of housing in the area and would include contributions to affordable housing provision. The proposals would also bring vacant previously developed land into a productive use in an accessible location. However, similar benefits could also be provided by a development which is more suitable than those proposed, and these matters therefore carry limited weight in favour of both appeals.

³ Pre-development Arboricultural Survey and Report, Wassells (May 2022).

Conclusions

63. With regard to Appeal A, notwithstanding my conclusions in respect of the mix of housing, the proposal would be contrary to the development plan when read as a whole with regards to character and appearance, the living conditions of future and neighbouring residents, and the effect on a tree.
64. Appeal B would also be contrary to the development plan in respect of character and appearance, housing mix, and the living conditions of future and neighbouring residents.
65. Both the schemes proposed by Appeal A and Appeal B would be contrary to the development plan and there are no material considerations that indicate that the decisions should be taken other than in accordance with the development plan.
66. I therefore conclude that both Appeal A and Appeal B should be dismissed.

David Cross

INSPECTOR